

CIVIL

U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:13-cv-00320-KJM-KJN

Gregory et al v. City of Vallejo, CA et al
Assigned to: Judge Kimberly J. Mueller
Referred to: Magistrate Judge Kendall J. Newman
Cause: 42:1983 Civil Rights Act

Date Filed: 02/20/2013
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Erika Gregory

represented by **Nicholas Casper**
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ATTORNEY TO BE NOTICED

Plaintiff

Loren Mollner

represented by **Nicholas Casper**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

City of Vallejo

represented by **Furah Z. Faruqui**
City of Vallejo
Office of City Attorney
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Robert Nichelini
Former VPD Chief

represented by **Furah Z. Faruqui**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Joseph Kreins
VPD Chief
TERMINATED: 04/10/2013

represented by **Furah Z. Faruqui**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Chase Calhoun
VPD Officer

represented by **Furah Z. Faruqui**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	clear	Docket Text
02/20/2013	1	<input type="checkbox"/>	CIVIL COVER SHEET by Erika Gregory, Loren Mollner (Casper, Nicholas) (Entered: 02/20/2013)
02/20/2013	2	<input type="checkbox"/>	COMPLAINT against All Defendants by Loren Mollner, Erika Gregory. Attorney Casper, Nicholas added.(Casper, Nicholas) Modified on 2/20/2013 (Zignago, K.). (Entered: 02/20/2013)
02/20/2013			RECEIPT number #CAE200050643 \$350.00 fbo Erika Gregory, Loren Mollner by Nicholas J. Casper on 2/20/2013. (Zignago, K.) (Entered: 02/20/2013)
02/20/2013	4	<input type="checkbox"/>	SUMMONS ISSUED as to *Chase Calhoun, City of Vallejo, Joseph Kreins, Robert Nichelini* with answer to complaint due within *21* days. Attorney *Nick Casper* *Casper, Meadows, Schwartz & Cook* *2121 North California Blvd., Suite 1020* *Walnut Creek, CA 94596*. (Zignago, K.) (Entered: 02/20/2013)
02/20/2013	5	<input type="checkbox"/>	CIVIL NEW CASE DOCUMENTS ISSUED; Initial Scheduling Conference set for 7/11/2013 at 02:30 PM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. (Attachments: # 1 Standing Order, # 2 Consent Form, # 3 VDRP) (Zignago, K.) (Entered: 02/20/2013)
03/22/2013	6	<input type="checkbox"/>	SUMMONS RETURNED EXECUTED: Chase Calhoun; City of Vallejo; Robert Nichelini served on 3/13/2013. (Attachments: # 1 Proof of Service, # 2 Proof of Service)(Casper, Nicholas) Modified on 3/25/2013 (Manzer, C). (Entered: 03/22/2013)
03/26/2013	7	<input type="checkbox"/>	DECLINE to PROCEED BEFORE US MAGISTRATE JUDGE by Chase Calhoun, City of Vallejo, Joseph Kreins, Robert Nichelini. Attorney Faruqui, Furah Z. added. (Faruqui, Furah) (Entered: 03/26/2013)
03/28/2013	8	<input type="checkbox"/>	CONSENT to JURISDICTION of US MAGISTRATE JUDGE by Erika Gregory, Loren Mollner. (Casper, Nicholas) (Entered: 03/28/2013)
04/03/2013	9	<input type="checkbox"/>	STIPULATION FOR EXTENSION OF TIME TO FILE RESPONSIVE PLEADING ON BEHALF OF ALL DEFENDANTS by Chase Calhoun, City of Vallejo, Joseph Kreins, Robert Nichelini. (Faruqui, Furah) (Entered: 04/03/2013)
04/09/2013	10	<input type="checkbox"/>	FIRST AMENDED COMPLAINT against Chase Calhoun, City of Vallejo, Robert Nichelini by Loren Mollner, Erika Gregory.(Casper, Nicholas) (Entered: 04/09/2013)

04/10/2013			PARTY UPDATE: Joseph Kreins (VPD Chief) terminated pursuant to Amended Complaint 10 . (Shaddox-Waldrop, A) (Entered: 04/10/2013)
04/23/2013	11	<input type="checkbox"/>	ANSWER to 10 Amended Complaint with Jury Demand by Chase Calhoun, City of Vallejo, Robert Nichelini. (Faruqui, Furah) Modified on 4/24/2013 (Michel, G). (Entered: 04/23/2013)
07/03/2013	12	<input type="checkbox"/>	JOINT STATUS REPORT by Erika Gregory, Loren Mollner. (Casper, Nicholas) (Entered: 07/03/2013)
07/08/2013	13		MINUTE ORDER issued by Courtroom Deputy C. Schultz for Judge Kimberly J. Mueller on 7/8/2013: The Status (Pretrial Scheduling) Conference set for 7/11/2013 at 2:30 p.m. is RESET for 3:30 p.m. in Courtroom 3 before Judge Kimberly J. Mueller. (Text Only Entry) (Schultz, C) (Entered: 07/08/2013)
07/11/2013	14		MINUTES for STATUS (PRETRIAL SCHEDULING) CONFERENCE held before Judge Kimberly J. Mueller on 7/11/2013. Plaintiffs' Counsel, Nicholas Casper, present. Defendants' Counsel, Furah Faruqui, present. The court and counsel discussed case scheduling; Formal written order to issue. Court Reporter: Kathy Swinhart. (Text Only Entry) (Schultz, C) (Entered: 07/11/2013)
07/23/2013	15	<input type="checkbox"/>	STATUS (PRETRIAL SCHEDULING) ORDER signed by Judge Kimberly J. Mueller on 7/22/13 ORDERING that Initial Disclosures shall be completed by 7/31/13. All Discovery shall be completed by 5/19/2014. Disclosure of Expert Witnesses due by 4/17/2014. All Expert Discovery shall be completed by 6/2/14. All Dispositive Motions shall be heard no later than 7/25/2014. The Final Pretrial Conference is SET for 10/2/2014 at 03:30 PM. The parties shall confer and file a joint Pretrial Conference Statement by 9/11/14. Jury Trial is SET for 11/17/2014 at 09:00 AM in Courtroom 3 (KJM) before Judge Kimberly J. Mueller. Trial briefs are due by 11/3/14.(Mena-Sanchez, L) (Entered: 07/23/2013)
11/20/2013	16	<input type="checkbox"/>	STIPULATION and PROPOSED ORDER for Protective Order by Chase Calhoun, City of Vallejo, Joseph Kreins, Robert Nichelini. (Faruqui, Furah) (Entered: 11/20/2013)
11/22/2013	17	<input type="checkbox"/>	STIPULATED PROTECTIVE ORDER signed by Magistrate Judge Kendall J. Newman on 11/22/2013. (Michel, G) (Entered: 11/22/2013)

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6 Attorneys for Plaintiffs ERIKA GREGORY and
7 LOREN MOLLNER

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERIKA GREGORY and LOREN MOLLNER,
Plaintiffs,

vs.

CITY OF VALLEJO; former VPD CHIEF
ROBERT NICHELINI, individually and in his
official capacity; VPD CHIEF JOSEPH
KREINS, individually and in his official
capacity; VPD OFFICER CHASE CALHOUN,
individually; and DOES 1 through 50,

Defendants.

CASE NO.:

**COMPLAINT FOR DAMAGES
(Violation of Civil Rights)**

JURY TRIAL DEMANDED

JURISDICTION AND VENUE

1. This Complaint seeks damages for the violation of Plaintiffs ERIKA GREGORY'S and LOREN MOLLNER'S (collectively, "Plaintiffs") rights protected by the Fourth Amendment to the United States Constitution. Plaintiffs bring this action under 42 United States Code § 1983. Plaintiffs also seek damages under California State law against those defendants whose conduct gave rise to claims cognizable by California law. The actions and failures to act which this Complaint alleges were committed by Vallejo Police Department personnel acting under color of law within the course and scope of their employment with CITY OF VALLEJO.

COMPLAINT

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1 2. The Complaint seeks remedies pursuant to Title 42, United States Code §§
2 1983 and 1988. Jurisdiction is conferred upon the United States District Court by Title 28,
3 United States Code §§ 1331 and 1343. This Court has supplemental jurisdiction over
4 Plaintiffs' state law claim pursuant to 28 United States Code § 1337(a).

5 3. The actions giving rise to defendants' liability as alleged in this Complaint
6 occurred in the City of Vallejo in the County of Solano, State of California. Venue is therefore
7 proper in the Sacramento Court of this District Court pursuant to Title 28 United States Code §
8 1391(b), and Local Rule 120(d).

JURY TRIAL DEMAND

10 4. Plaintiffs hereby demand a jury trial in this action.

IDENTIFICATION OF PARTIES

12 5. At all times relevant to this Complaint, Plaintiffs ERIKA GREGORY
13 ("GREGORY") and LOREN MOLLNER ("MOLLNER") are a married couple who reside in
14 Vallejo, California, in the County of Solano, and were of full age.

15 6. Defendant CITY OF VALLEJO is a public entity, duly organized and existing
16 under the laws of the State of California, and is a "person" under 42 United States Code §
17 1983. Defendant CITY OF VALLEJO includes the Vallejo Police Department ("VPD"). At all
18 times relevant to this Complaint, VPD was supervised, controlled and staffed by defendant
19 CITY OF VALLEJO, its officers, agents and employees. At all times relevant to this
20 Complaint, defendants acted within the course and scope of their employment with CITY OF
21 VALLEJO, which caused the harm of which Plaintiff complains.

22 7. CITY OF VALLEJO is also liable under California State law for the actions and
23 failures to act committed by individuals acting in the course and scope of their employment
24 with CITY OF VALLEJO.

25 8. At the time of the alleged constitutional and state tort violations suffered by
26 Plaintiffs on May 16, 2012, defendant ROBERT NICHELINI ("CHIEF NICHELINI") was the
27 Chief of Police of VPD. As Chief of Police, CHIEF NICHELINI was an official with final policy-

1 making authority regarding the supervision, training and discipline of police officers for CITY
2 OF VALLEJO. CHIEF NICHELINI is being sued in his individual and official capacities.

3 9. In approximately July 2012, defendant JOSEPH KREINS ("CHIEF KREINS")
4 became the Interim Chief of Police of VPD after CHIEF NICHELINI retired, and CHIEF
5 KREINS was named the Chief of Police of VPD in December 2012. As Chief of Police, CHIEF
6 KREINS is an official with final policy-making authority regarding the supervision, training and
7 discipline of police officers for CITY OF VALLEJO. CHIEF KREINS is being sued in his
8 individual and official capacities.

9 10. At all times relevant to this Complaint, defendant OFFICER CHASE CALHOUN
10 ("OFFICER CALHOUN") was a police officer employed by VPD who was acting under color of
11 law. OFFICER CALHOUN is being sued in his individual capacity.

12 11. Plaintiffs are ignorant of the true names and capacities of defendants DOES 1
13 through 50, and therefore sue these defendants by such fictitious names. Plaintiffs are
14 informed and believe, and thereon allege, that each DOE defendant is responsible in some
15 manner for the injuries and damages suffered by Plaintiffs as described in this Complaint.
16 Plaintiffs will amend their Complaint to state the true names and capacities of defendants
17 DOES 1 through 50 when they have been ascertained. Any reference in this Complaint to
18 "defendant," "defendants," or to an individually-named defendant, also refers to defendants
19 DOES 1 through 50. These defendants are sued in their official and individual capacities.

20 12. Each defendant sued in this Complaint acted as the agent or employee of
21 every other defendant.

22 FACTS GIVING RISE TO THE COMPLAINT

23 13. At all times relevant to the allegations contained in this Complaint, Plaintiffs
24 lived at 47 Kentucky Street in Vallejo, California, with their 7-year-old son and 5-year-old
25 daughter. Plaintiffs owned the home.

26 14. On or about May 10, 2012, Plaintiffs discovered that a series of checks had
27 been forged against their joint checking account in an amount totaling approximately \$5,000.
28 Plaintiffs subsequently discovered that 5 checks had been stolen from a check book located in

1 Plaintiffs' home at 47 Kentucky Street. Plaintiffs notified their bank, Umpqua Bank, of the
2 stolen and forged checks, and duly reported the theft to VPD.

3 15. An investigator from Plaintiffs' bank discovered that the forger had signed her
4 name on the checks and provided her driver's license while cashing the checks at a Wells
5 Fargo Bank in Vallejo. The bank investigator called VPD to report this evidence, including that
6 the forging party was likely captured on surveillance video at Wells Fargo, but VPD was
7 unresponsive in following up on the leads.

8 16. On May 16, 2012, at approximately 11:00 a.m., GREGORY called the
9 Investigations Unit of VPD to inquire about the status of the investigation into the theft. A
10 female VPD employee informed GREGORY that that she was transferring GREGORY to
11 dispatch because the Investigations Unit could not handle the theft report. Subsequently, the
12 dispatch operator notified GREGORY that she needed to speak with someone from the
13 Investigations Unit, as GREGORY had previously attempted, since this was not a new report,
14 but an open case, and transferred GREGORY back to Investigations. The same female VPD
15 employee from the Investigations Unit informed GREGORY that she would try to relay a
16 message to dispatch to have an officer follow up with GREGORY, but stated something to the
17 effect of, "I can't guarantee you anything."

18 17. At approximately 12:10 p.m., VPD dispatched a uniformed patrol officer,
19 OFFICER CALHOUN, to 47 Kentucky Street. OFFICER CALHOUN had no prior involvement
20 in the investigation into the theft, but was aware that he was being dispatched to follow up with
21 the victims of a theft crime, and that he was not responding to a crime in progress.

22 18. At no time did VPD inform Plaintiffs that VPD would be sending a police officer,
23 or any other VPD employee, to Plaintiff's residence at 47 Kentucky Street.

24 19. At the time of the incident, 47 Kentucky Street was a well-maintained home
25 with a low white-picket fence surrounding the property. The property is situated on the corner
26 of Kentucky and Trinity Streets, with the front of Plaintiffs' home facing Kentucky Street. A
27 wooden gate on Kentucky Street provided access to the property from the public sidewalk. A
28 well-landscaped front yard, with fruit trees, flowers, and bushes, separated the front porch of

1 the home from the front fence and gate, and obscured a clear view onto the property from the
2 sidewalk, providing the home with additional privacy.

3 20. Plaintiffs owned three dogs: Flicka, a 14-year-old blind and deaf Border Collie-
4 mix that weighs approximately 40 pounds; Belle, an 11-year-old Labrador-Catahoula-mix that
5 weighed approximately 70 pounds; and Holly, a 9-month-old Labrador puppy. While the dogs
6 acted as 'watchdogs' to alert the family when people entered the property, none of the dogs
7 had ever bitten or otherwise attacked anyone. The family regularly had friends visit and enter
8 the yard without incident; delivery and utility employees also would periodically enter the
9 property without any incidents with the dogs, including an individual who made weekly
10 deliveries of fresh vegetables onto the front porch. At the time of the incident, the two older
11 dogs slept in the yard, while the puppy was inside the home in the living room.

12 21. OFFICER CALHOUN approached Plaintiffs' front gate on Kentucky Street.
13 The view onto the property from the gate was very limited due to several fruit trees in the yard
14 along the fence line, as well as bushes and other plants. The view from the gate would have
15 revealed a walkway leading to a children's wading pool in the front yard approximately 15 feet
16 from the gate, as well as children's and dog toys on the property. The front picket fence along
17 Kentucky Street also had metal mesh installed in spots to ensure that the dogs could not hop
18 the short fence.

19 22. OFFICER CALHOUN opened the gate and let himself onto the property.
20 GREGORY was working from home with her back to the window along the front of the house,
21 and was positioned to hear noises from the front yard, including the impending arrival of her
22 daughter from nursery school. GREGORY did not hear anything to alert her that OFFICER
23 CALHOUN had entered the property.

24 23. Soon after OFFICER CALHOUN entered the yard, Flicka and Belle approached
25 him. OFFICER CALHOUN stated in his report that the dogs came toward him in a "very
26 aggressive" manner and "I knew they were going to attack me." Neither dog made any
27 contact with OFFICER CALHOUN, nor did they bite him.

28

1 24. OFFICER CALHOUN fired at least two rounds at Belle (the closer of the two
2 dogs) from his police-issued handgun, striking her twice in the head and killing her. OFFICER
3 CALHOUN then exited the yard and closed the gate. It is unknown at what point OFFICER
4 CALHOUN drew his firearm prior to the shooting.

5 25. The shots were fired in the general direction of the home; at the time the shots
6 were fired, GREGORY was sitting in a front window less than 20 feet from the shooting.
7 Unaware that VPD was coming to her home, GREGORY dropped to the floor, terrified,
8 believing someone was shooting at her. When she finally mustered the courage to crack the
9 front door after a period of silence, OFFICER CALHOUN repeatedly yelled at her to stay in the
10 house.

11 26. Eventually OFFICER CALHOUN allowed GREGORY to exit her house and go
12 into the yard. OFFICER CALHOUN apologized and stated he "wished he didn't have to do
13 that." GREGORY then discovered Belle lying dead approximately 10 feet from the front gate,
14 4-5 feet from a short wooden fence that enclosed the front yard, and less than 2 feet from the
15 children's wading pool. Minutes later, the babysitter arrived at the home to drop off Plaintiffs'
16 5-year-old daughter from nursery school; GREGORY instructed the babysitter to drive away
17 before her daughter witnessed the grisly scene.

18 27. Plaintiff is informed and believes, and on that basis alleges, that defendants
19 CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50 failed to
20 adequately train, supervise, and discipline the police officers of the CITY OF VALLEJO with
21 respect to the Fourth Amendment to the United States Constitution, including under what
22 circumstances, and on what grounds, it is proper to enter private property unannounced,
23 without a warrant, and without exigent circumstances; the proper precautionary measures to
24 take when entering private property where there may be dogs and/or children present; and
25 under what circumstances it is proper to use deadly force.

26 28. Plaintiff is informed and believes, and on that basis alleges, that defendants
27 CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50 had actual
28 and/or constructive knowledge that the failure to adequately train, supervise, and discipline

1 police officers would cause violations of citizens' personal and constitutional rights such as
2 those that occurred in this case.

3 **DAMAGES**

4 29. As a direct and proximate result of the conduct of defendants, and each of
5 them, Plaintiffs suffered violations of their rights protected by, among other enactments, the
6 Fourth Amendment to the United States Constitution; by Article 1, § 13 of the California
7 Constitution; and by California Civil Code §§ 52 and 52.1.

8 30. Plaintiffs also sustained damages from the trespasses to real property and
9 chattels, conversions, and the intentional infliction of emotional distress inflicted on Plaintiffs
10 by defendants acting within the course and scope of their employment with CITY OF
11 VALLEJO.

12 31. As a direct and proximate result of defendants' conduct, Plaintiffs suffered
13 emotional distress, loss of property, and the loss of the sense of security, dignity, and pride as
14 a resident of the United States of America.

15 32. Those individually named defendants, including, but not limited to, OFFICER
16 CALHOUN and DOES 1 through 50, who participated in, or were otherwise responsible for,
17 the incident at 47 Kentucky Street that resulted in the wrongful shooting death of Plaintiffs'
18 dog acted with malice and oppression. These defendants' conduct was intended to harm
19 Plaintiffs or was despicable and carried out with a conscious disregard of Plaintiffs' rights or
20 safety. Plaintiffs therefore are entitled to recover exemplary damages from those defendants.

21 33. Plaintiffs have retained attorneys and investigators to pursue their rights as
22 asserted in this Complaint. Plaintiffs are entitled to an award of reasonable attorneys' fees
23 incurred in the prosecution of this action against defendants CITY OF VALLEJO, the individual
24 VPD officers named as defendants, and DOES 1 through 50, pursuant to 42 United States
25 Code § 1988.

26 **FIRST CLAIM FOR RELIEF**

27 **42 U.S.C. § 1983**

28 **(Against OFFICER CALHOUN, and DOES 1 through 50)**

COMPLAINT

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1 34. Plaintiffs reallege and incorporate by reference paragraphs 1 through 33 as
2 though fully set forth in this cause of action.

3 35. The actions of the individual defendants, including OFFICER CALHOUN and
4 DOES 1 through 50, acted under color of law in violating Plaintiffs' rights protected by the
5 Fourth Amendment to the United States Constitution, including, but not limited to, the right to
6 be free from the use of excessive force and the unnecessary destruction of property by law
7 enforcement officers. These actions included: the warrantless entry onto Plaintiffs' property
8 without exigent circumstances; the failure to take reasonable precautionary measures when
9 entering private property unannounced where dogs and/or children are present; and the
10 unreasonable and excessive use of force in the shooting death of Plaintiffs' dog.

11 36. Those individually named defendants, including OFFICER CALHOUN and
12 DOES 1 through 50, who participated in, or were otherwise responsible for, the incident at 47
13 Kentucky Street that resulted in the wrongful shooting death of Plaintiffs' dog acted with
14 malice and oppression. These defendants' conduct was intended to harm Plaintiffs or was
15 despicable and carried out with a conscious disregard of Plaintiffs' rights or safety. Plaintiffs
16 therefore are entitled to recover exemplary damages from those defendants.

17 37. As a direct and proximate result of defendants' actions and omissions, Plaintiffs
18 were deprived of their rights and privileges under the Fourth Amendment to the United States
19 Constitution.

20 WHEREFORE, Plaintiffs prays for relief as set forth below.

21 **SECOND CLAIM FOR RELIEF**

22 **42 U.S.C. § 1983**

23 **(Against Defendants CITY OF VALLEJO, CHIEF NICHELI, CHIEF KREINS,
24 and DOES 1 through 50)**

25 Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 as though
26 fully set forth in this cause of action.

27 38. At all times relevant to this Complaint, it was the policy, practice and custom of
28 CITY OF VALLEJO, CHIEF NICHELI, CHIEF KREINS, and DOES 1 through 50, acting
through their policymakers and agents, to violate the Fourth Amendment to the Constitution as
described in this Complaint. Those violations which constituted the policy of CITY OF

29 **COMPLAINT**

30 *Gregory and Mollner v. City of Vallejo, et al.*

1 VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50, included, but not
2 limited to: the warrantless entry onto Plaintiffs' property without exigent circumstances; the
3 failure to take reasonable precautionary measures when entering private property
4 unannounced where dogs and/or children are present; and the unreasonable and excessive
5 use of force in the shooting death of Plaintiffs' dog. The failure of policymakers CHIEF
6 NICHELINI and CHIEF KREINS, and to those they delegated to make and enforce CITY OF
7 VALLEJO policy, to discipline OFFICER CALHOUN, and any other responsible VPD
8 employees, who violated Plaintiffs' Fourth Amendment rights ratified that unconstitutional
9 conduct and further confirmed that the violation of Plaintiffs' rights represented CITY OF
10 VALLEJO policy. The policies, practices and customs of CITY OF VALLEJO, CHIEF
11 NICHELINI, CHIEF KREINS, and DOES 1 through 50 were the moving forces behind the
12 violation of Plaintiffs' rights protected by the Fourth Amendment to the United States
13 Constitution.

14 39. At all times relevant to this Complaint, it was obvious that CITY OF VALLEJO,
15 CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50 must properly train Vallejo police
16 officers to refrain from violating the Fourth Amendment rights of residents, and that such
17 training must include, in part, the requirements: not to enter private property unannounced
18 without a warrant and without exigent circumstances; to take reasonable precautionary
19 measures when entering a private property unannounced where dogs and/or children are
20 present; and not to use unreasonable, unjustified, and/or excessive force.

21 40. At all times relevant, it was obvious that the failure to provide such training, as
22 set forth above, would result in violations of the Fourth Amendment to the United States
23 Constitution.

24 41. At all times relevant to this Complaint, it was obvious that the failure to provide
25 such training reflected a deliberate indifference to the protection of the rights guaranteed by
26 the Fourth Amendment to the United States Constitution.

27 42. The failure by CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and
28 DOES 1 through 50, acting through VPD and their policymakers, to properly train Vallejo

1 police officers to refrain from committing violations of the Fourth Amendment to the United
2 States Constitution caused the alleged unconstitutional actions of VPD which Plaintiff alleges
3 in this Complaint.

4 43. As a direct and proximate result of the policies, practices, acts and omissions
5 of defendants CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through
6 50, Plaintiffs sustained harm and the special and general damages which Plaintiffs will
7 establish at trial.

8 WHEREFORE, Plaintiffs pray for relief as set forth below.

**THIRD CLAIM FOR RELIEF
TRESPASS**

**(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

12 Plaintiffs reallege and incorporate by reference paragraphs 1 through 43 as though
13 fully set forth in this cause of action.

14 44. On September 28, 2012, CITY OF VALLEJO received the government claims
15 that Plaintiffs had timely filed pursuant to the provisions of the California Tort Claims Act,
16 California Government Code §§ 910, et seq.

17 45. The individual employees committed their alleged actions in the course and
18 scope of their employment as CITY OF VALLEJO employees. The employees are liable
19 pursuant to California Government Code § 820(a), which renders a public employee liable for
20 injury caused by his or her act or omission to the same extent as a private person. CITY OF
21 VALLEJO is liable pursuant to Government Code § 815.2, which renders a public entity liable
22 for injury proximately caused by an act or omission of an employee of a public entity within the
23 scope of his or her employment if the act or omission would give rise to a cause of action
24 against the public employee.

25 46. On May 16, 2012, Plaintiffs were the lawful owners and occupants of the
26 private dwelling located at 47 Kentucky Street in Vallejo, California.

1 47. On May 16, 2012, OFFICER CALHOUN intentionally entered Plaintiffs' property
2 and dwelling located at 47 Kentucky Street unannounced, without a warrant, without exigent
3 circumstances, and without Plaintiffs' permission.

4 48. The actions of these defendants, and each of them, was a substantial factor in
5 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
6 establish at trial, including the death of their pet dog, Belle.

7 49. The individually named defendants, including OFFICER CALHOUN and DOES
8 1 through 50, acted with malice and oppression. The conduct of these individually named
9 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
10 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
11 damages from those defendants.

12 WHEREFORE, Plaintiffs pray for relief as set forth below.

**FOURTH CLAIM FOR RELIEF
TRESPASS TO CHATTELS
(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

16 Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 as though
17 fully set forth in this cause of action.

18 50. On May 16, 2012, Plaintiffs were the lawful owner of their pet dog, Belle.

19 51. On May 16, 2012, OFFICER CALHOUN intentionally fired at least two rounds
20 at Belle from his police-issued handgun while on Plaintiffs' private property at 47 Kentucky
21 Street, striking her twice in the head and killing her.

22 52. Plaintiffs did not consent to the wrongful shooting death of their dog, Belle, by
23 OFFICER CALHOUN.

24 53. The actions of these defendants, and each of them, was a substantial factor in
25 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
26 establish at trial.

27 54. The individually named defendants, including OFFICER CALHOUN and DOES
28 1 through 50, acted with malice and oppression. The conduct of these individually named

1 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
2 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
3 damages from those defendants.

4 WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **FIFTH CLAIM FOR RELIEF**
6 **CONVERSION**
7 **(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

8 Plaintiffs reallege and incorporate by reference paragraphs 1 through 54 as though
9 fully set forth in this cause of action.

10 55. On May 16, 2012, Plaintiffs were the lawful owner of their pet dog, Belle.

11 56. On May 16, 2012, OFFICER CALHOUN intentionally fired at least two rounds
12 at Belle from his police-issued handgun while on Plaintiffs' private property at 47 Kentucky
13 Street, striking her twice in the head and killing her, thereby substantially interfering with
14 Plaintiffs' property by wrongfully killing Plaintiffs' dog.

15 57. Plaintiffs did not consent to the substantial interference with their personal
16 property by OFFICER CALHOUN.

17 58. The actions of these defendants, and each of them, was a substantial factor in
18 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
19 establish at trial.

20 59. The individually named defendants, including OFFICER CALHOUN and DOES
21 1 through 50, acted with malice and oppression. The conduct of these individually named
22 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
23 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
24 damages from those defendants.

25 WHEREFORE, Plaintiffs pray for relief as set forth below.

26 **SIXTH CLAIM FOR RELIEF**
27 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**
28 **(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

1 Plaintiffs reallege and incorporate by reference paragraphs 1 through 59 as though
2 fully set forth in this cause of action.

3 60. On May 16, 2012, OFFICER CALHOUN and DOES 1 through 50, either
4 engaged in outrageous conduct intended to cause Plaintiffs emotional distress or acted with
5 reckless disregard of the probability that Plaintiffs would suffer emotional distress, knowing
6 that Plaintiffs were present when each defendant committed the outrageous conduct alleged
7 in this complaint.

8 61. Plaintiffs suffered severe emotional distress.

9 62. Each defendant's conduct was a substantial factor in causing the alleged
10 severe emotional distress.

11 63. The individually named defendants, including OFFICER CALHOUN and DOES
12 1 through 50, acted with malice and oppression. The conduct of these individually named
13 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
14 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
15 damages from those defendants.

16 WHEREFORE, Plaintiffs pray for relief as set forth below.

17
18 **SEVENTH CLAIM FOR RELIEF**
19 **CALIFORNIA CIVIL CODE §§ 52, 52.1**
20 **(Against CITY OF VALLEJO, OFFICER CALHOUN,**
21 **and DOES 1 through 50)**

22 Plaintiffs reallege and incorporate by reference paragraphs 1 through 63 as though
23 fully set forth in this cause of action.

24 64. On May 16, 2012, OFFICER CALHOUN and DOES 1 through 50, using
25 threats, coercion and intimidation, interfered with and threatened to interfere with Plaintiffs'
rights guaranteed by the Fourth Amendment to the United States Constitution, and Art. 1, § 13
of the California Constitution

26 65. The actions of these defendants, and each of them, was a substantial factor in
27 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
28 establish at trial.

1 66. The individually named defendants, including OFFICER CALHOUN and DOES
2 1 through 50, acted with malice and oppression. The conduct of these individually named
3 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
4 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
5 damages from those defendants.

6 67. Plaintiffs are entitled to such statutory damages and attorney's fees allowed by
7 California Civil Code §§ 52 and 52.1.

8 WHEREFORE, Plaintiffs pray for relief as follows:

9 1. For general damages, according to proof;
10 2. For special damages, according to proof;
11 3. For pecuniary damages, according to proof;
12 4. For burial expenses, according to proof;
13 5. For punitive damages against the individually named defendants;
14 6. For statutory damages pursuant to California Civil Code §§ 52 and 52.1;
15 7. For reasonable attorney's fees pursuant to 42 U.S.C. § 1988 on Plaintiffs' First
16 and Second Claims for Relief;
17 8. For reasonable attorney's fees pursuant to California Civil Code §§ 52 and 52.1
18 on Plaintiffs' Seventh Claim for Relief;
19 9. For costs of suit incurred herein; and
20 10. For such other and further relief as the court may deem just and proper.

21
22 Dated: February 19, 2013


Nick Casper
CASPER, MEADOWS, SCHWARTZ & COOK
Attorneys for Plaintiffs ERIKA GREGORY and
LOREN MOLLNER

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ERIKA GREGORY and LOREN MOLLNER,
Plaintiffs,

vs.

CITY OF VALLEJO; former VPD CHIEF
ROBERT NICHELINI, individually and in his
official capacity; VPD CHIEF JOSEPH
KREINS, individually and in his official
capacity; VPD OFFICER CHASE CALHOUN,
individually; and DOES 1 through 50,

Defendants.

CASE NO.:

**COMPLAINT FOR DAMAGES
(Violation of Civil Rights)**

JURY TRIAL DEMANDED

JURISDICTION AND VENUE

1. This Complaint seeks damages for the violation of Plaintiffs ERIKA GREGORY'S and LOREN MOLLNER'S (collectively, "Plaintiffs") rights protected by the Fourth Amendment to the United States Constitution. Plaintiffs bring this action under 42 United States Code § 1983. Plaintiffs also seek damages under California State law against those defendants whose conduct gave rise to claims cognizable by California law. The actions and failures to act which this Complaint alleges were committed by Vallejo Police Department personnel acting under color of law within the course and scope of their employment with CITY OF VALLEJO.

COMPLAINT

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1 2. The Complaint seeks remedies pursuant to Title 42, United States Code §§
2 1983 and 1988. Jurisdiction is conferred upon the United States District Court by Title 28,
3 United States Code §§ 1331 and 1343. This Court has supplemental jurisdiction over
4 Plaintiffs' state law claim pursuant to 28 United States Code § 1337(a).

5 3. The actions giving rise to defendants' liability as alleged in this Complaint
6 occurred in the City of Vallejo in the County of Solano, State of California. Venue is therefore
7 proper in the Sacramento Court of this District Court pursuant to Title 28 United States Code §
8 1391(b), and Local Rule 120(d).

JURY TRIAL DEMAND

10 4. Plaintiffs hereby demand a jury trial in this action.

IDENTIFICATION OF PARTIES

12 5. At all times relevant to this Complaint, Plaintiffs ERIKA GREGORY
13 ("GREGORY") and LOREN MOLLNER ("MOLLNER") are a married couple who reside in
14 Vallejo, California, in the County of Solano, and were of full age.

15 6. Defendant CITY OF VALLEJO is a public entity, duly organized and existing
16 under the laws of the State of California, and is a "person" under 42 United States Code §
17 1983. Defendant CITY OF VALLEJO includes the Vallejo Police Department ("VPD"). At all
18 times relevant to this Complaint, VPD was supervised, controlled and staffed by defendant
19 CITY OF VALLEJO, its officers, agents and employees. At all times relevant to this
20 Complaint, defendants acted within the course and scope of their employment with CITY OF
21 VALLEJO, which caused the harm of which Plaintiff complains.

22 7. CITY OF VALLEJO is also liable under California State law for the actions and
23 failures to act committed by individuals acting in the course and scope of their employment
24 with CITY OF VALLEJO.

25 8. At the time of the alleged constitutional and state tort violations suffered by
26 Plaintiffs on May 16, 2012, defendant ROBERT NICHELINI ("CHIEF NICHELINI") was the
27 Chief of Police of VPD. As Chief of Police, CHIEF NICHELINI was an official with final policy-

1 making authority regarding the supervision, training and discipline of police officers for CITY
2 OF VALLEJO. CHIEF NICHELINI is being sued in his individual and official capacities.

3 9. In approximately July 2012, defendant JOSEPH KREINS ("CHIEF KREINS")
4 became the Interim Chief of Police of VPD after CHIEF NICHELINI retired, and CHIEF
5 KREINS was named the Chief of Police of VPD in December 2012. As Chief of Police, CHIEF
6 KREINS is an official with final policy-making authority regarding the supervision, training and
7 discipline of police officers for CITY OF VALLEJO. CHIEF KREINS is being sued in his
8 individual and official capacities.

9 10. At all times relevant to this Complaint, defendant OFFICER CHASE CALHOUN
10 ("OFFICER CALHOUN") was a police officer employed by VPD who was acting under color of
11 law. OFFICER CALHOUN is being sued in his individual capacity.

12 11. Plaintiffs are ignorant of the true names and capacities of defendants DOES 1
13 through 50, and therefore sue these defendants by such fictitious names. Plaintiffs are
14 informed and believe, and thereon allege, that each DOE defendant is responsible in some
15 manner for the injuries and damages suffered by Plaintiffs as described in this Complaint.
16 Plaintiffs will amend their Complaint to state the true names and capacities of defendants
17 DOES 1 through 50 when they have been ascertained. Any reference in this Complaint to
18 "defendant," "defendants," or to an individually-named defendant, also refers to defendants
19 DOES 1 through 50. These defendants are sued in their official and individual capacities.

20 12. Each defendant sued in this Complaint acted as the agent or employee of
21 every other defendant.

22 FACTS GIVING RISE TO THE COMPLAINT

23 13. At all times relevant to the allegations contained in this Complaint, Plaintiffs
24 lived at 47 Kentucky Street in Vallejo, California, with their 7-year-old son and 5-year-old
25 daughter. Plaintiffs owned the home.

26 14. On or about May 10, 2012, Plaintiffs discovered that a series of checks had
27 been forged against their joint checking account in an amount totaling approximately \$5,000.
28 Plaintiffs subsequently discovered that 5 checks had been stolen from a check book located in

1 Plaintiffs' home at 47 Kentucky Street. Plaintiffs notified their bank, Umpqua Bank, of the
2 stolen and forged checks, and duly reported the theft to VPD.

3 15. An investigator from Plaintiffs' bank discovered that the forger had signed her
4 name on the checks and provided her driver's license while cashing the checks at a Wells
5 Fargo Bank in Vallejo. The bank investigator called VPD to report this evidence, including that
6 the forging party was likely captured on surveillance video at Wells Fargo, but VPD was
7 unresponsive in following up on the leads.

8 16. On May 16, 2012, at approximately 11:00 a.m., GREGORY called the
9 Investigations Unit of VPD to inquire about the status of the investigation into the theft. A
10 female VPD employee informed GREGORY that that she was transferring GREGORY to
11 dispatch because the Investigations Unit could not handle the theft report. Subsequently, the
12 dispatch operator notified GREGORY that she needed to speak with someone from the
13 Investigations Unit, as GREGORY had previously attempted, since this was not a new report,
14 but an open case, and transferred GREGORY back to Investigations. The same female VPD
15 employee from the Investigations Unit informed GREGORY that she would try to relay a
16 message to dispatch to have an officer follow up with GREGORY, but stated something to the
17 effect of, "I can't guarantee you anything."

18 17. At approximately 12:10 p.m., VPD dispatched a uniformed patrol officer,
19 OFFICER CALHOUN, to 47 Kentucky Street. OFFICER CALHOUN had no prior involvement
20 in the investigation into the theft, but was aware that he was being dispatched to follow up with
21 the victims of a theft crime, and that he was not responding to a crime in progress.

22 18. At no time did VPD inform Plaintiffs that VPD would be sending a police officer,
23 or any other VPD employee, to Plaintiff's residence at 47 Kentucky Street.

24 19. At the time of the incident, 47 Kentucky Street was a well-maintained home
25 with a low white-picket fence surrounding the property. The property is situated on the corner
26 of Kentucky and Trinity Streets, with the front of Plaintiffs' home facing Kentucky Street. A
27 wooden gate on Kentucky Street provided access to the property from the public sidewalk. A
28 well-landscaped front yard, with fruit trees, flowers, and bushes, separated the front porch of

1 the home from the front fence and gate, and obscured a clear view onto the property from the
2 sidewalk, providing the home with additional privacy.

3 20. Plaintiffs owned three dogs: Flicka, a 14-year-old blind and deaf Border Collie-
4 mix that weighs approximately 40 pounds; Belle, an 11-year-old Labrador-Catahoula-mix that
5 weighed approximately 70 pounds; and Holly, a 9-month-old Labrador puppy. While the dogs
6 acted as 'watchdogs' to alert the family when people entered the property, none of the dogs
7 had ever bitten or otherwise attacked anyone. The family regularly had friends visit and enter
8 the yard without incident; delivery and utility employees also would periodically enter the
9 property without any incidents with the dogs, including an individual who made weekly
10 deliveries of fresh vegetables onto the front porch. At the time of the incident, the two older
11 dogs slept in the yard, while the puppy was inside the home in the living room.

12 21. OFFICER CALHOUN approached Plaintiffs' front gate on Kentucky Street.
13 The view onto the property from the gate was very limited due to several fruit trees in the yard
14 along the fence line, as well as bushes and other plants. The view from the gate would have
15 revealed a walkway leading to a children's wading pool in the front yard approximately 15 feet
16 from the gate, as well as children's and dog toys on the property. The front picket fence along
17 Kentucky Street also had metal mesh installed in spots to ensure that the dogs could not hop
18 the short fence.

19 22. OFFICER CALHOUN opened the gate and let himself onto the property.
20 GREGORY was working from home with her back to the window along the front of the house,
21 and was positioned to hear noises from the front yard, including the impending arrival of her
22 daughter from nursery school. GREGORY did not hear anything to alert her that OFFICER
23 CALHOUN had entered the property.

24 23. Soon after OFFICER CALHOUN entered the yard, Flicka and Belle approached
25 him. OFFICER CALHOUN stated in his report that the dogs came toward him in a "very
26 aggressive" manner and "I knew they were going to attack me." Neither dog made any
27 contact with OFFICER CALHOUN, nor did they bite him.

28

1 24. OFFICER CALHOUN fired at least two rounds at Belle (the closer of the two
2 dogs) from his police-issued handgun, striking her twice in the head and killing her. OFFICER
3 CALHOUN then exited the yard and closed the gate. It is unknown at what point OFFICER
4 CALHOUN drew his firearm prior to the shooting.

5 25. The shots were fired in the general direction of the home; at the time the shots
6 were fired, GREGORY was sitting in a front window less than 20 feet from the shooting.
7 Unaware that VPD was coming to her home, GREGORY dropped to the floor, terrified,
8 believing someone was shooting at her. When she finally mustered the courage to crack the
9 front door after a period of silence, OFFICER CALHOUN repeatedly yelled at her to stay in the
10 house.

11 26. Eventually OFFICER CALHOUN allowed GREGORY to exit her house and go
12 into the yard. OFFICER CALHOUN apologized and stated he "wished he didn't have to do
13 that." GREGORY then discovered Belle lying dead approximately 10 feet from the front gate,
14 4-5 feet from a short wooden fence that enclosed the front yard, and less than 2 feet from the
15 children's wading pool. Minutes later, the babysitter arrived at the home to drop off Plaintiffs'
16 5-year-old daughter from nursery school; GREGORY instructed the babysitter to drive away
17 before her daughter witnessed the grisly scene.

18 27. Plaintiff is informed and believes, and on that basis alleges, that defendants
19 CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50 failed to
20 adequately train, supervise, and discipline the police officers of the CITY OF VALLEJO with
21 respect to the Fourth Amendment to the United States Constitution, including under what
22 circumstances, and on what grounds, it is proper to enter private property unannounced,
23 without a warrant, and without exigent circumstances; the proper precautionary measures to
24 take when entering private property where there may be dogs and/or children present; and
25 under what circumstances it is proper to use deadly force.

26 28. Plaintiff is informed and believes, and on that basis alleges, that defendants
27 CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50 had actual
28 and/or constructive knowledge that the failure to adequately train, supervise, and discipline

1 police officers would cause violations of citizens' personal and constitutional rights such as
2 those that occurred in this case.

3 **DAMAGES**

4 29. As a direct and proximate result of the conduct of defendants, and each of
5 them, Plaintiffs suffered violations of their rights protected by, among other enactments, the
6 Fourth Amendment to the United States Constitution; by Article 1, § 13 of the California
7 Constitution; and by California Civil Code §§ 52 and 52.1.

8 30. Plaintiffs also sustained damages from the trespasses to real property and
9 chattels, conversions, and the intentional infliction of emotional distress inflicted on Plaintiffs
10 by defendants acting within the course and scope of their employment with CITY OF
11 VALLEJO.

12 31. As a direct and proximate result of defendants' conduct, Plaintiffs suffered
13 emotional distress, loss of property, and the loss of the sense of security, dignity, and pride as
14 a resident of the United States of America.

15 32. Those individually named defendants, including, but not limited to, OFFICER
16 CALHOUN and DOES 1 through 50, who participated in, or were otherwise responsible for,
17 the incident at 47 Kentucky Street that resulted in the wrongful shooting death of Plaintiffs'
18 dog acted with malice and oppression. These defendants' conduct was intended to harm
19 Plaintiffs or was despicable and carried out with a conscious disregard of Plaintiffs' rights or
20 safety. Plaintiffs therefore are entitled to recover exemplary damages from those defendants.

21 33. Plaintiffs have retained attorneys and investigators to pursue their rights as
22 asserted in this Complaint. Plaintiffs are entitled to an award of reasonable attorneys' fees
23 incurred in the prosecution of this action against defendants CITY OF VALLEJO, the individual
24 VPD officers named as defendants, and DOES 1 through 50, pursuant to 42 United States
25 Code § 1988.

26 **FIRST CLAIM FOR RELIEF**

27 **42 U.S.C. § 1983**

28 **(Against OFFICER CALHOUN, and DOES 1 through 50)**

COMPLAINT

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1 34. Plaintiffs reallege and incorporate by reference paragraphs 1 through 33 as
2 though fully set forth in this cause of action.

3 35. The actions of the individual defendants, including OFFICER CALHOUN and
4 DOES 1 through 50, acted under color of law in violating Plaintiffs' rights protected by the
5 Fourth Amendment to the United States Constitution, including, but not limited to, the right to
6 be free from the use of excessive force and the unnecessary destruction of property by law
7 enforcement officers. These actions included: the warrantless entry onto Plaintiffs' property
8 without exigent circumstances; the failure to take reasonable precautionary measures when
9 entering private property unannounced where dogs and/or children are present; and the
10 unreasonable and excessive use of force in the shooting death of Plaintiffs' dog.

11 36. Those individually named defendants, including OFFICER CALHOUN and
12 DOES 1 through 50, who participated in, or were otherwise responsible for, the incident at 47
13 Kentucky Street that resulted in the wrongful shooting death of Plaintiffs' dog acted with
14 malice and oppression. These defendants' conduct was intended to harm Plaintiffs or was
15 despicable and carried out with a conscious disregard of Plaintiffs' rights or safety. Plaintiffs
16 therefore are entitled to recover exemplary damages from those defendants.

17 37. As a direct and proximate result of defendants' actions and omissions, Plaintiffs
18 were deprived of their rights and privileges under the Fourth Amendment to the United States
19 Constitution.

20 WHEREFORE, Plaintiffs prays for relief as set forth below.

21 **SECOND CLAIM FOR RELIEF**

22 **42 U.S.C. § 1983**

23 **(Against Defendants CITY OF VALLEJO, CHIEF NICHELI, CHIEF KREINS,
24 and DOES 1 through 50)**

25 Plaintiffs reallege and incorporate by reference paragraphs 1 through 37 as though
26 fully set forth in this cause of action.

27 38. At all times relevant to this Complaint, it was the policy, practice and custom of
28 CITY OF VALLEJO, CHIEF NICHELI, CHIEF KREINS, and DOES 1 through 50, acting
through their policymakers and agents, to violate the Fourth Amendment to the Constitution as
described in this Complaint. Those violations which constituted the policy of CITY OF

29 **COMPLAINT**

30 *Gregory and Mollner v. City of Vallejo, et al.*

1 VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50, included, but not
2 limited to: the warrantless entry onto Plaintiffs' property without exigent circumstances; the
3 failure to take reasonable precautionary measures when entering private property
4 unannounced where dogs and/or children are present; and the unreasonable and excessive
5 use of force in the shooting death of Plaintiffs' dog. The failure of policymakers CHIEF
6 NICHELINI and CHIEF KREINS, and to those they delegated to make and enforce CITY OF
7 VALLEJO policy, to discipline OFFICER CALHOUN, and any other responsible VPD
8 employees, who violated Plaintiffs' Fourth Amendment rights ratified that unconstitutional
9 conduct and further confirmed that the violation of Plaintiffs' rights represented CITY OF
10 VALLEJO policy. The policies, practices and customs of CITY OF VALLEJO, CHIEF
11 NICHELINI, CHIEF KREINS, and DOES 1 through 50 were the moving forces behind the
12 violation of Plaintiffs' rights protected by the Fourth Amendment to the United States
13 Constitution.

14 39. At all times relevant to this Complaint, it was obvious that CITY OF VALLEJO,
15 CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through 50 must properly train Vallejo police
16 officers to refrain from violating the Fourth Amendment rights of residents, and that such
17 training must include, in part, the requirements: not to enter private property unannounced
18 without a warrant and without exigent circumstances; to take reasonable precautionary
19 measures when entering a private property unannounced where dogs and/or children are
20 present; and not to use unreasonable, unjustified, and/or excessive force.

21 40. At all times relevant, it was obvious that the failure to provide such training, as
22 set forth above, would result in violations of the Fourth Amendment to the United States
23 Constitution.

24 41. At all times relevant to this Complaint, it was obvious that the failure to provide
25 such training reflected a deliberate indifference to the protection of the rights guaranteed by
26 the Fourth Amendment to the United States Constitution.

27 42. The failure by CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and
28 DOES 1 through 50, acting through VPD and their policymakers, to properly train Vallejo

1 police officers to refrain from committing violations of the Fourth Amendment to the United
2 States Constitution caused the alleged unconstitutional actions of VPD which Plaintiff alleges
3 in this Complaint.

4 43. As a direct and proximate result of the policies, practices, acts and omissions
5 of defendants CITY OF VALLEJO, CHIEF NICHELINI, CHIEF KREINS, and DOES 1 through
6 50, Plaintiffs sustained harm and the special and general damages which Plaintiffs will
7 establish at trial.

8 WHEREFORE, Plaintiffs pray for relief as set forth below.

**THIRD CLAIM FOR RELIEF
TRESPASS**

**(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

12 Plaintiffs reallege and incorporate by reference paragraphs 1 through 43 as though
13 fully set forth in this cause of action.

14 44. On September 28, 2012, CITY OF VALLEJO received the government claims
15 that Plaintiffs had timely filed pursuant to the provisions of the California Tort Claims Act,
16 California Government Code §§ 910, et seq.

17 45. The individual employees committed their alleged actions in the course and
18 scope of their employment as CITY OF VALLEJO employees. The employees are liable
19 pursuant to California Government Code § 820(a), which renders a public employee liable for
20 injury caused by his or her act or omission to the same extent as a private person. CITY OF
21 VALLEJO is liable pursuant to Government Code § 815.2, which renders a public entity liable
22 for injury proximately caused by an act or omission of an employee of a public entity within the
23 scope of his or her employment if the act or omission would give rise to a cause of action
24 against the public employee.

25 46. On May 16, 2012, Plaintiffs were the lawful owners and occupants of the
26 private dwelling located at 47 Kentucky Street in Vallejo, California.

1 47. On May 16, 2012, OFFICER CALHOUN intentionally entered Plaintiffs' property
2 and dwelling located at 47 Kentucky Street unannounced, without a warrant, without exigent
3 circumstances, and without Plaintiffs' permission.

4 48. The actions of these defendants, and each of them, was a substantial factor in
5 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
6 establish at trial, including the death of their pet dog, Belle.

7 49. The individually named defendants, including OFFICER CALHOUN and DOES
8 1 through 50, acted with malice and oppression. The conduct of these individually named
9 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
10 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
11 damages from those defendants.

12 WHEREFORE, Plaintiffs pray for relief as set forth below.

**FOURTH CLAIM FOR RELIEF
TRESPASS TO CHATTELS
(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

16 Plaintiffs reallege and incorporate by reference paragraphs 1 through 49 as though
17 fully set forth in this cause of action.

18 50. On May 16, 2012, Plaintiffs were the lawful owner of their pet dog, Belle.

19 51. On May 16, 2012, OFFICER CALHOUN intentionally fired at least two rounds
20 at Belle from his police-issued handgun while on Plaintiffs' private property at 47 Kentucky
21 Street, striking her twice in the head and killing her.

22 52. Plaintiffs did not consent to the wrongful shooting death of their dog, Belle, by
23 OFFICER CALHOUN.

24 53. The actions of these defendants, and each of them, was a substantial factor in
25 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
26 establish at trial.

27 54. The individually named defendants, including OFFICER CALHOUN and DOES
28 1 through 50, acted with malice and oppression. The conduct of these individually named

1 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
2 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
3 damages from those defendants.

4 WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **FIFTH CLAIM FOR RELIEF**
6 **CONVERSION**
7 **(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

8 Plaintiffs reallege and incorporate by reference paragraphs 1 through 54 as though
9 fully set forth in this cause of action.

10 55. On May 16, 2012, Plaintiffs were the lawful owner of their pet dog, Belle.

11 56. On May 16, 2012, OFFICER CALHOUN intentionally fired at least two rounds
12 at Belle from his police-issued handgun while on Plaintiffs' private property at 47 Kentucky
13 Street, striking her twice in the head and killing her, thereby substantially interfering with
14 Plaintiffs' property by wrongfully killing Plaintiffs' dog.

15 57. Plaintiffs did not consent to the substantial interference with their personal
16 property by OFFICER CALHOUN.

17 58. The actions of these defendants, and each of them, was a substantial factor in
18 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
19 establish at trial.

20 59. The individually named defendants, including OFFICER CALHOUN and DOES
21 1 through 50, acted with malice and oppression. The conduct of these individually named
22 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
23 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
24 damages from those defendants.

25 WHEREFORE, Plaintiffs pray for relief as set forth below.

26 **SIXTH CLAIM FOR RELIEF**
27 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**
28 **(Against CITY OF VALLEJO, OFFICER CALHOUN,
and DOES 1 through 50)**

1 Plaintiffs reallege and incorporate by reference paragraphs 1 through 59 as though
2 fully set forth in this cause of action.

3 60. On May 16, 2012, OFFICER CALHOUN and DOES 1 through 50, either
4 engaged in outrageous conduct intended to cause Plaintiffs emotional distress or acted with
5 reckless disregard of the probability that Plaintiffs would suffer emotional distress, knowing
6 that Plaintiffs were present when each defendant committed the outrageous conduct alleged
7 in this complaint.

8 61. Plaintiffs suffered severe emotional distress.

9 62. Each defendant's conduct was a substantial factor in causing the alleged
10 severe emotional distress.

11 63. The individually named defendants, including OFFICER CALHOUN and DOES
12 1 through 50, acted with malice and oppression. The conduct of these individually named
13 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
14 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
15 damages from those defendants.

16 WHEREFORE, Plaintiffs pray for relief as set forth below.

17
18 **SEVENTH CLAIM FOR RELIEF**
19 **CALIFORNIA CIVIL CODE §§ 52, 52.1**
20 **(Against CITY OF VALLEJO, OFFICER CALHOUN,**
21 **and DOES 1 through 50)**

22 Plaintiffs reallege and incorporate by reference paragraphs 1 through 63 as though
23 fully set forth in this cause of action.

24 64. On May 16, 2012, OFFICER CALHOUN and DOES 1 through 50, using
25 threats, coercion and intimidation, interfered with and threatened to interfere with Plaintiffs'
rights guaranteed by the Fourth Amendment to the United States Constitution, and Art. 1, § 13
of the California Constitution

26 65. The actions of these defendants, and each of them, was a substantial factor in
27 causing Plaintiffs to sustain harm and the special and general damages which Plaintiffs will
28 establish at trial.

1 66. The individually named defendants, including OFFICER CALHOUN and DOES
2 1 through 50, acted with malice and oppression. The conduct of these individually named
3 defendants was intended to harm Plaintiffs or was despicable and carried out with a conscious
4 disregard of Plaintiffs' rights or safety. Plaintiffs therefore are entitled to recover exemplary
5 damages from those defendants.

6 67. Plaintiffs are entitled to such statutory damages and attorney's fees allowed by
7 California Civil Code §§ 52 and 52.1.

8 WHEREFORE, Plaintiffs pray for relief as follows:

9 1. For general damages, according to proof;
10 2. For special damages, according to proof;
11 3. For pecuniary damages, according to proof;
12 4. For burial expenses, according to proof;
13 5. For punitive damages against the individually named defendants;
14 6. For statutory damages pursuant to California Civil Code §§ 52 and 52.1;
15 7. For reasonable attorney's fees pursuant to 42 U.S.C. § 1988 on Plaintiffs' First
16 and Second Claims for Relief;
17 8. For reasonable attorney's fees pursuant to California Civil Code §§ 52 and 52.1
18 on Plaintiffs' Seventh Claim for Relief;
19 9. For costs of suit incurred herein; and
20 10. For such other and further relief as the court may deem just and proper.

21
22 Dated: February 19, 2013


Nick Casper
CASPER, MEADOWS, SCHWARTZ & COOK
Attorneys for Plaintiffs ERIKA GREGORY and
LOREN MOLLNER

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Attorneys for Defendants, CITY OF VALLEJO, ROBERT NICHELINI, CHASE CALHOUN

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

ERIKA GREGORY and
LOREN MOLLNER,

Case No. 2:13-CV-00320-KJM-KJN

Plaintiffs.

DEFENDANTS' EXHIBIT LIST

CITY OF VALLEJO; former VPD CHIEF ROBERT NICHELINI, individually and in his official capacity; VPD OFFICER CHASE CALHOUN, individually; and DOES 1 through 50,

Defendants.

Judge: Hon. Kimberly J. Mueller
Crtrm: 3, 15th Floor
Trial Date: January 26, 2015

Defendants' Exhibit List

Preliminary Instruction 1

Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

It is your duty to find the facts from all the evidence in the case. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are, and then apply those facts to the law which I will give to you. This is how you will reach your verdict.

You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. The evidence will consist of the testimony of witnesses, documents, and other things received into evidence as exhibits and any facts on which the lawyers agree or which I may instruct you to accept.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

Preliminary Instruction 2

2 During the trial you may hear me use a few terms that you may not have heard before. I
3 will briefly explain some of the most common to you. The parties who have brought suit are
4 called the plaintiffs. In this action, the plaintiffs are Erika Gregory and Loren Mollner. The
5 parties being sued are called the defendants. The defendants in this case are the City of Vallejo,
6 and Officer Chase Calhoun.

7 Plaintiffs are represented by Nicholas Casper and defendants are represented by Furah
8 Faruqui.

9 The attorneys representing the parties in this case are not allowed to speak with you.
10 When you see the attorneys at a recess or pass them in the halls and they do not speak to you,
11 they are not being rude or unfriendly – they are simply following the law.

12 You will sometimes hear me refer to “counsel.” Counsel is another way of saying
13 “lawyers” or “attorneys.” I will sometimes refer to myself as the “court.”

14 To help you follow the evidence, I will give you a brief summary of the positions of the
15 parties:

16 Plaintiffs claim that defendant Chase Calhoun wrongfully shot and killed their dog, Belle,
17 on their property in Vallejo, California, on May 16, 2012.

18 || Plaintiffs raise four claims:

19 1. That defendants violated their Fourth Amendment rights under the United States
20 Constitution;
21 2. That defendants committed conversion under California law;
22 3. That defendants intentionally inflicted emotional distress on plaintiffs; and
23 4. That defendants violated plaintiffs' constitutional rights under California law.

24 Defendants deny the claims. Defendants maintain that Chase Calhoun acted lawfully, and
25 that plaintiffs are not entitled to any relief for their claims.

26 || ////

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1 Plaintiffs have the burden of proving their claims. They must prove their claims by a
2 preponderance of the evidence. When a party has the burden of proof on any claim by a
3 preponderance of the evidence, it means you must be persuaded by the evidence that the claim is
4 more probably true than not true.

5 You should base your decision on all of the evidence, regardless of which party presented
6 it.

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Preliminary Instruction 3

You should decide the case as to each defendant separately. Unless otherwise stated, the instructions apply to each party.

Preliminary Instruction 4

The evidence you are to consider in deciding what the facts are consists of:

- 1) the sworn testimony of any witness;
- 2) the exhibits which are received into evidence; and
- 3) any facts to which the parties have agreed.

6 There are rules of evidence that control what can be received into evidence. From time to
7 time during the trial, I may make rulings on objections or motions made by the lawyers. When I
8 sustain an objection, I am excluding that evidence from this trial. If I sustain or uphold an
9 objection to a question that goes unanswered by the witness, you should not draw any inferences
10 or conclusions from the question. You must ignore the question and must not guess what the
11 answer might have been. When I overrule an objection, I am permitting that evidence to be
12 admitted.

13 Sometimes I may order that evidence be stricken from the record and that you disregard or
14 ignore the evidence. That means that when you are deciding the case, you must not consider the
15 evidence that I told you to disregard.

16 It is counsels' duty to object when the other side offers testimony or other evidence that
17 they believe is not admissible. You should not be unfair or prejudiced against either party
18 because they made objections.

19 You should not infer or conclude from any ruling or other comment I may make that I
20 have any opinion on the merits of the case favoring one side or the other. I do not favor one side
21 or the other.

Preliminary Instruction 5

2 In reaching your verdict, you may consider only the testimony and exhibits received into
3 evidence. Certain things are not evidence, and you may not consider them in deciding what the
4 facts are. I will list them for you:

5 (1) Arguments and non-testimonial statements by counsel for either party are not
6 evidence. Counsel for the parties are not witnesses. What they say in their opening statements,
7 will say in their closing arguments, and at other times is intended to help you interpret the
8 evidence, but it is not evidence. If the facts as you remember them differ from the way they have
9 stated them, your memory of them controls.

10 (2) Questions and objections by counsel for either party are not evidence.

16 (4) Anything you may have seen or heard when the court was not in session is not
17 evidence. You are to decide the case solely on the evidence received at the trial.

Preliminary Instruction 6

2 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as
3 testimony by a witness about what that witness personally saw or heard or did. Circumstantial
4 evidence is proof of one or more facts from which you could find another fact. You should
5 consider both kinds of evidence. The law makes no distinction between the weight to be given to
6 either direct or circumstantial evidence. It is for you to decide how much weight to give to any
7 evidence.

8 By way of example, if you wake up in the morning and see that the sidewalk is wet, you
9 may find from that fact that it rained during the night. However, other evidence, such as a turned
10 on garden hose, may provide a different explanation for the presence of water on the sidewalk.

11 Therefore, before you decide that a fact has been proved by circumstantial evidence, you
12 must consider all the evidence in the light of reason, experience, and common sense.

Preliminary Instruction 7

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it. The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

Preliminary Instruction 8

2 A witness may be discredited or impeached by evidence that is contradictory or shows
3 that at some other time the witness has said or done something or has failed to say or do
4 something which is inconsistent with the witness's present testimony. The evidence that a
5 witness has been convicted of a crime may also be considered, along with all other evidence, in
6 deciding whether or not to believe the witness and how much weight to give to the testimony of
7 the witness. This evidence may not be considered for any other purpose.

8 As I have already instructed you, it is up to you to decide which testimony to believe and
9 which testimony not to believe. You may believe everything a witness says, or part of it, or none
10 of it.

Preliminary Instruction 9

2 Some witnesses, because of education or experience, are permitted to state opinions and
3 the reasons for those opinions.

4 Opinion testimony should be judged just like any other testimony. You may accept it or
5 reject it, and give it as much weight as you think it deserves, considering the witness's education
6 and experience, the reasons given for the opinion, and all the other evidence in the case.

Preliminary Instruction 10

2 From time to time during the trial, it may become necessary for me to talk with the
3 attorneys out of the hearing of the jury, either by having a conference at the bench when the jury
4 is present in the courtroom, or by calling a recess. Please understand that while you are waiting,
5 we are working. The purpose of these conferences is not to keep relevant information from you,
6 but to decide how certain evidence is to be treated under the rules of evidence and to avoid
7 confusion and error.

8 Of course, we will do what we can to keep the number and length of these conferences to
9 a minimum. I may not always grant a request for a conference. Do not consider my granting or
10 denying a request for a conference as any indication of my opinion of the case or of what your
11 verdict should be.

Preliminary Instruction 11

2 At the end of the trial, you will have to make your decision based on what you recall of
3 the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the
4 testimony as given.

5 If at any time you cannot hear the testimony, evidence, questions, or arguments or see the
6 witnesses or evidence, let me know so that I can correct the problem.

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Preliminary Instruction 12

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you. When you leave, your notes should be left in the courtroom. No one will read your notes. They will be destroyed at the conclusion of the case.

6 Whether or not you take notes, you should rely on your own memory of the evidence.
7 Notes are only to assist your memory. You should not be overly influenced by your notes or
8 those of your fellow jurors.

Preliminary Instruction 13

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via e-mail, text messaging, or any Internet chat room, blog, Web site or other feature. This applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated as a juror in the case. But, if you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Because you will receive all the evidence and legal instruction you properly may consider to return a verdict: do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

Third, if you need to communicate with me simply give a signed note to the clerk to give to me.

Fourth, do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

1 The law requires these restrictions to ensure the parties have a fair trial based on the same
2 evidence that each party has had an opportunity to address. A juror who violates these
3 restrictions jeopardizes the fairness of these proceeding and a mistrial could result, meaning that
4 there would have to be a new trial. If any juror is exposed to any outside information, please
5 notify the court immediately.

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Preliminary Instruction 14

2 The next phase of the trial will now begin. First, each side may make an opening
3 statement. An opening statement is not evidence. It is simply an outline to help you understand
4 what that party expects the evidence will show. A party is not required to make an opening
5 statement.

6 Plaintiff's counsel will then present evidence, and counsel for the defendants may cross-
7 examine. Then defendants' counsel may present evidence, and counsel for the plaintiff may
8 cross-examine.

9 After the evidence has been presented, I will instruct you on the law that applies to the
10 case and the attorneys will make closing arguments.

11 After that, you will go to the jury room to deliberate on your verdict.

Preliminary Instruction for Recess

2 We are about to take our first break during the trial, and I want to remind you of the
3 instructions I gave you earlier. Until the trial is over, you are not to discuss this case with anyone,
4 including your fellow jurors, members of your family, people involved in the trial, or anyone else,
5 nor are you allowed to permit others to discuss the case with you. If anyone approaches you and
6 tries to talk to you about the case, please let me know about it immediately. Do not read or listen
7 to any news reports of the trial. Do not conduct any research of any kind, including by using a
8 cell phone or other electronic device, or by going to a library or other outside source. Finally, you
9 are reminded to keep an open mind until all the evidence has been received and you have heard
10 the arguments of counsel, the instructions of the court, and the views of your fellow jurors.

11 If you need to speak with me about anything, simply give a signed note to the clerk to give
12 to me.

13 I will not repeat these admonitions each time we recess or adjourn, but you will be
14 reminded of them on such occasions.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE KIMBERLY J. MUELLER

ERIKA GREGORY and LOREN
MOLLNER,

No. 2:13-cv-0320-KJM-KJN

Plaintiffs,

v.

MINUTES

CITY OF VALLEJO, former VPD
CHIEF ROBERT NICHELINI, VPD
OFFICER CHASE CALHOUN, et al.,

Date: January 29, 2015
Deputy Clerk: C. Schultz
Court Reporter: Kathy Swinhart

Defendants.

/

Counsel for Plaintiffs: Nicholas Casper

Counsel for Defendants: Furah Faruqui

JURY TRIAL (Day 4):

8:30 a.m. Attorneys present as identified above. Defendant, Chase Calhoun, present. Outside the presence of the jury, the court and counsel discussed final jury instructions.

8:50 a.m. All parties excused until 9:30 a.m.

9:35 a.m. Court back in session. All parties present including Plaintiffs, Erika Gregory and Loren Mollner. Jury present. Plaintiffs' witness, Valerie Christiansen Eberling, DVM, sworn and testified on direct.

9:40 a.m. Ms. Faruqui examined the witnesses as to the witnesses' qualifications to testify as an expert.

9:42 a.m. Direct examination continued.

9:50 a.m. Cross examination began.

9:55 a.m. Redirect examination began.

10:00 a.m. Witness excused. Plaintiff rested. Defendants' witness, Chief Jared Zwickey, sworn and testified on direct.

10:25 a.m. Cross examination began.

10:30 a.m. Redirect examination began.

10:35 a.m. Witness excused. Subject to motions, defense rested. Jury admonished and excused for a morning break. Outside the presence of the jury, the court heard argument as to defense motions. The court denied defendants' motions without prejudice.

10:40 a.m. All parties excused for a morning break.

11:10 a.m. Court back in session. All parties present. Jury present. Mr. Casper presented plaintiffs' closing arguments.

11:50 a.m. Ms. Faruqui presented defendants' closing arguments.

12:00 p.m. Mr. Casper presented plaintiffs' rebuttal closing arguments.

12:10 p.m. Jury admonished and excused for an afternoon break. All parties excused for an afternoon break.

12:20 p.m. Court back in session. All parties present. Jury present. The court instructed the jury.

12:50 p.m. The court security officer was sworn and jury deliberations began. Outside the presence of the jury, the court and counsel discussed a final edit to the verdict form. The court confirmed the modification would be made as proposed by counsel and the form would be immediately provided to the jury.

12:55 p.m. All parties excused pending deliberations.

2:23 p.m. Jury note received.

2:40 p.m. Court back in session. Attorneys present as identified above. Defendant, Chase Calhoun, present. Outside the presence of the jury, the court and counsel discussed the jury note received at 2:23 p.m.

2:45 p.m. The court took a short recess to draft a proposed response to the jury note received at 2:30 p.m.

2:50 p.m. Court back in session. Attorneys present as identified above. Defendant, Chase Calhoun, present. Outside the presence of the jury, the court and counsel further discussed the jury note received at 2:23 p.m. and the court's proposed response.

2:55 p.m. All parties excused pending deliberations.

3:00 p.m. After review by counsel, the court delivered a written response to the jury note received at 2:30 p.m.

3:45 p.m. Jury note received.

4:03 p.m. Jury note received.

4:05 p.m. Court back in session. Attorneys present as identified above. Defendant, Chase Calhoun, present. Outside the presence of the jury, the court and counsel discussed the jury notes received at 3:45 p.m. and 4:03 p.m.

4:07 p.m. Jury present. The court admonished and excused the jury until 9:00 a.m. on February 3, 2015. Outside the presence of the jury, the court and counsel discussed housekeeping matters.

4:10 p.m. All parties excused for evening recess. Jury Trial (Day 5) set for February 3, 2015 at 9:00 a.m.

ADMITTED EXHIBITS:

36, B (Demonstrative)

TIME IN COURT: 3 Hours, 15 Minutes

EXHIBIT ID	DESCRIPTION	OFFERED	ADMITTED
2	Photograph of Belle and Flicka with family	1/26/2015	1/26/2015
4	Photograph of Belle with Plaintiffs' children	1/26/2015	1/26/2015
5	Photograph of Erika Gregory with Belle	1/26/2015	1/26/2015
7	Photograph of a portion of Plaintiffs' fence surrounding their property at 47 Kentucky Street	1/27/2015	1/27/2015
11	Photograph of Plaintiffs' gate from Kentucky Street looking into their property (date of incident)	1/26/2015	1/26/2015
12	Photograph of Plaintiffs' gate from inside their property looking out toward Kentucky Street	1/26/2015	1/26/2015
19	Photograph of cobbled path from Plaintiff's gate leading into their property looking toward Plaintiffs' house	1/26/2015	1/26/2015
20	Photograph of cobbled path from Plaintiff's gate leading into their property looking toward Plaintiffs' house (different angle)	1/26/2015	1/26/2015
21	Photograph of cobbled path from Plaintiff's gate leading into their property looking toward Plaintiffs' house (different angle)	1/26/2015	1/26/2015
22	Photograph of cobbled path from Plaintiff's gate leading into their property looking toward Plaintiffs' house (different angle)	1/26/2015	1/26/2015
23	Photograph of cobbled path from Plaintiff's gate leading into their property looking toward Plaintiffs' house (different angle)	1/26/2015	1/26/2015
24	Photograph of Plaintiffs' house and front porch	1/26/2015	1/26/2015
26	Photograph of wire fencing attached to picket fence on Kentucky Street (different angle)	1/27/2015	1/27/2015
27	Photograph of Belle's body on patio	1/28/2015	1/28/2015
28	Photograph of Belle's body on patio (different angle)	1/26/2015	1/26/2015
29	Photograph of Belle's body on patio (different angle)	1/27/2015	1/27/2015
31	Photograph of Belle's body at veterinarian's office	1/26/2015	1/26/2015
32	Photograph of Belle's head showing entry wounds	1/27/2015	1/27/2015
35	CAD Log related to subject incident	1/27/2015	1/27/2015

EXHIBIT ID	DESCRIPTION	OFFERED	ADMITTED
36	Dr. Valerie Christiansen's notes re: examination of Belle's body	1/29/2015	1/29/2015
B	Demonstrative of Location of Incident	1/29/2015	1/29/2015

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FILED

FEB - 4 2015

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY 
DEPUTY CLERK 

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIKA GREGORY, et al.,

No. 2:13-cv-0320-KJM-KJN

Plaintiffs,

VERDICT

CITY OF VALLEJO, et al.,

Defendants.

1. Fourth Amendment Violation

Have the plaintiffs proven by a preponderance of the evidence that Chase Calhoun's killing of Belle was an unreasonable seizure in violation of plaintiffs' rights under the Fourth Amendment of the U.S. Constitution?

Yes _____

No 

2. Conversion

Have the plaintiffs proven by a preponderance of the evidence that Chase Calhoun committed conversion in killing Belle?

Yes _____

No 

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1 3. Intentional Infliction of Emotional Distress

2 Have the plaintiffs proven by a preponderance of evidence that Chase Calhoun
3 intentionally inflicted emotional distress upon plaintiffs?

4 Yes _____ No 

5 4. Bane Act

6 Have the plaintiffs proven by a preponderance of evidence that Chase Calhoun
7 intentionally interfered with their civil rights by threats, intimidation, or coercion?

8 Yes _____ No 

9 5. If you have unanimously answered "no" to all of the above questions, please have your
10 foreperson sign and date this form. Then, please contact the Deputy or Marshal to inform him or
11 her that you have completed your deliberations.

12 If you have unanimously answered "yes" to any of the above questions, please continue
13 your deliberations and answer the remaining questions.

14 6. If you answered "yes" to question 1, state the amount of damages, if any, each plaintiff
15 should recover from defendant Chase Calhoun. If you answered "no" to question 1, continue to
16 question 7.

17 Erika Gregory \$ _____

18 Loren Mollner \$ _____

19 7. If you answered "yes" to question 2, state the amount of damages, if any, each plaintiff
20 should recover from defendant Chase Calhoun and City of Vallejo. If you answered "no" to
21 question 2, continue to question 8.

22 Erika Gregory \$ _____

23 Loren Mollner \$ _____

24 8. If you answered "yes" to question 3, state the amount of damages, if any, each plaintiff
25 should recover from defendant Chase Calhoun and City of Vallejo. If you answered "no" to
26 question 3, continue to question 9.

27 Erika Gregory \$ _____

28 Loren Mollner \$ _____

1 9. If you answered "yes" to question 4, state the amount of damages, if any, each plaintiff
2 should recover from defendant Chase Calhoun and City of Vallejo. If you answered "no" to
3 question 4, continue to question 10.

4 Erika Gregory \$ _____

5 Loren Mollner \$ _____

6 10. Have the plaintiffs proven that they are entitled to punitive damages?

7 Yes _____ No _____

8 11. If your answer to question 10 is "yes," please indicate the amount that Chase Calhoun is
9 liable for punitive damages.

10 \$ _____

11 12 DATED:


13 FOREPERSON *Brett Coder*

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

ERIKA GREGORY, ET AL.,

v.

CASE NO: 2:13-CV-00320-KJM-KJN

CITY OF VALLEJO, ET AL.,

XX -- Jury Verdict. This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE JURY VERDICT RENDERED 2/4/15

Marianne Matherly
Clerk of Court

ENTERED: **February 6, 2015**

by: /s/ H. Kaminski
Deputy Clerk